

# UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUANA MORENO, et al.

Case No. 1:23-cv-00449-SAB

**Plaintiff,**

**ORDER DENYING NOTICE OF  
VOLUNTARY DISMISSAL AS  
PROCEDURALLY IMPROPER**

UNITED STATES OF AMERICA,

(ECF No. 21)

**Defendant.**

## **FOURTEEN DAY DEADLINE**

On March 24, 2023, Plaintiffs Juana Moreno, Veronica Moreno, George Moreno, Diega Moreno, Cristina Moreno, Nancy Moreno, and Gabriel Moreno filed this action against Defendants United States of America, United Health Centers of the San Joaquin Valley, and Amarjot Rai, M.D. (ECF No. 1.) On May 31, 2023, the United States filed a motion to dismiss Defendants United Health Centers of the San Joaquin Valley and Amarjot Rai, M.D. for lack of subject matter jurisdiction. (ECF No. 12.) On June 7, 2023, Defendant United States filed an answer to the complaint. (ECF No. 14.) Following Plaintiffs' non-opposition to Defendant United States' motion to dismiss, the Court granted the motion on July 11, 2023. (ECF No. 16.) On February 13, 2024, Plaintiff George Moreno filed a notice of dismissal requesting the Court dismiss him from the action without prejudice. (ECF No. 13.) The filing does not cite any Federal Rule of Civil Procedure, is only signed by Plaintiff George Moreno and his counsel.

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “a plaintiff has an

1 absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a  
2 motion for summary judgment.” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193  
3 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.  
4 1997)). Here, Defendant United States of America has filed an answer, so Plaintiff George  
5 Moreno cannot voluntarily dismiss himself from this action simply by “notice” pursuant to Rule  
6 41(a)(1)(A)(i).

7 Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an  
8 action without a court order by filing a stipulation of dismissal signed by all parties who have  
9 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). A party may also dismiss an action by filing a  
10 motion requesting the Court to dismiss the action. Fed. R. Civ. P. 41(a)(2). A motion for  
11 voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the district court.  
12 Hamilton v. Firestone Tire & Rubber Co. Inc., 679 F.2d 143, 145 (9th Cir. 1982).

13 Plaintiff’s notice of voluntary dismissal is defective because it is not a signed stipulation  
14 by all parties who have appeared, and it is not a motion under Rule 41(a)(2). If Plaintiff wishes  
15 to dismiss this action, he is required to comply with the procedures set forth in Rule 41 by filing  
16 a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under Rule 41(a)(2).

17 Accordingly, Plaintiff’s notice of voluntary dismissal is HEREBY DENIED without  
18 prejudice as procedurally improper. Plaintiff shall file a request for dismissal that complies with  
19 Rule 41 **within fourteen (14) days** from the date of entry of this order.

20 IT IS SO ORDERED.  
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22 Dated: February 14, 2024



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UNITED STATES MAGISTRATE JUDGE